REMARKS

This is in response to the *Final* Office Action, dated June 15, 2005, where the Examiner has rejected claims 1-2, 4-38 and 40-48. Reconsideration and allowance of pending claims 1-2, 4-38 and 40-48 in view of the following remarks are respectfully requested.

A.   **Rejection of Claims 1, 2, 4, 5, 30 and 33 under 35 USC § 103(a)**

The Examiner has rejected claims 1, 2, 4, 5, 30 and 33, under 35 USC § 103(a), as being unpatentable over Scott, et al. (USPN 5,311,596) ("Scott") in view of Kalmanek, et al. (USPN 6,757,290) ("Kalmanek"). Applicant respectfully disagrees.

In response to the previous Office Action, applicant respectfully submitted that "the fundamental difference is that prior to steps 320-360 in Fig. 3 of Scott, in step 304, the modems have already finished the physical handshaking process and established the data connection and, thus, the subsequent steps do not occur during the physical handshaking process." However, the Examiner has found this fundamental difference unpersuasive and states that "Physical handshaking has not finished in Scott's 305 since even after the data connection is established in Scott's 305, various steps still need to occur before data transfer is enabled in 360 ...."

Applicant respectfully submits that the Examiner's statement that "Physical handshaking has not finished in Scott's 305 since even after the data connection is established in Scott's 305, various steps still need to occur before data transfer is enabled in 360" is false. As declared by Dr. Jason Brent, in the declaration attached hereto, "'physical layer handshaking' in the area of modem technology commonly refers to the modem training session, which is performed to establish a data connection between modems, and that 'physical layer handshaking ends when a

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'data connection' is established." (See, ¶ 4.) Accordingly, contrary to the Examiner's position, the physical layer handshaking ends at step 305 in Scott and doers not continue. Applicant respectfully submits that this is a key difference that separates applicant's position from the Examiner's position. The issue is not that Scott requires the identification to occur continuously and not once. This is not applicant's argument. Rather, applicant respectfully submits that a key difference between Scott and, for example, claim 30 of the present invention is that, according to claim 30, the identification process occurs during the physical layer handshaking and not after the modems enter data mode, i.e. data connection. In other words, Scott does not disclose a key element of claim 30.

Furthermore, applicant argues that Scott does not teach or suggest this key element of claim 30 and, in fact, Scott teaches away from the invention of claim 30, because Scott advocates a continuous identification in data mode. Since the physical layer handshaking occurs only once at the beginning of the connection and ends when the modems enter the data mode, Scott's approach becomes the opposite of claim 30. As explained by Scott, systems that perform the authentication process only once at the beginning of a data connection are inadequate, because they are susceptible to "spoofing", and can be taken over by intruders. (Col. 1, line 42- Col.2, line 27.) To provide security against an active wire tap and spoofing, Scott teaches that access security be provided to a PSTN data connection by a continuous re-authentication procedure between the modems. Col. 2, lines 30-40.) Scott teaches that such continuous re-authentication procedure can occur by using a side channel of the data connection to periodically or aperiodically send authentication information during the duration of the data connection. (Col. 2, lines 40-45.) Further, the Examiner's attention is directed Figs. 3 and 5, the transition from step

370 to 325. As shown in Figs. 3 and 5, the authentication process continues during the call to prevent a potential security breach by an active wire tap or spoofing.

In the present Office Action, the Examiner acknowledges that Scott does not render claim 1 obvious by itself. However, the Examine has combined Scott with Kalmanek as a basis for stating that Kalmanek teaches that the following can occur during the handshaking process: "transmitting a pseudo-randomly generated code word to said second modem during said physical handshaking process; receiving a scrambled code word from said second modem, wherein said scrambled code word is generated by scrambling said code word during said physical handshaking process; analyzing said scrambled code word during said physical handshaking process; determining if said second modem meets a compatibility criteria based on said analyzing during said physical handshaking process." Applicant respectfully submits that various functions that the Examiner refers to Fig. 2 of Kalmanek do not come close to disclosing, teaching or suggesting that the identification process of claim 1 can occur during physical handshaking process. Even more importantly, applicant respectfully submits that Scott teaches away from combining Scott with any reference that performs an identification process during the physical handshaking process. This is because, Scott teaches and explicitly requires that the identification process to occur continuously during the call, and not once. According to Scott, the communication system becomes susceptible to spoofing if the identification process does not occur continuously (periodically or aperiodically) during the call. Since the physical handshaking process occurs only once at the beginning of each modem call, one of ordinary skill in the art would not implement Scott's identification process during the physical handshaking

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process, because Scott's identification process must occur continuously during the call to be effective.

Further, applicant notes that the Examiner has rejected claim 2 of the present application by simply referring to step 320 of Fig. 3 in Scott (retrieve key based on calling modem's ID). However, it is respectfully submitted that retrieving a key based on calling modem's ID does not come close to "identification data comprises information selected from the group consisting of a platform identifier, a controller revision, a DSP revision, and a firmware revision." The Examiner states that "The ID in modem ID stands for identification data which has information which at the minimum is platform identifier." (emphasis added.) Apparently, the Examiner is taking an Official Notice that modem ID at a minimum includes a platform identifier, since none of the cited references discloses or teaches such limitation. Applicant respectfully disagrees with the Examiner's statement and respectfully requests the Examiner to provide a support by citing a reference that discloses a modem ID is selected from the group consisting of a platform identifier, a controller revision, a DSP revision, and a firmware revision. Otherwise, applicant respectfully requests that rejection of claim 2 to be withdrawn.

Moreover, with respect to rejection of claim 30, Scott merely discloses Modem ID 610 in Fig. 4, and fails to disclose transmitting a first modem manufacturer parameter and receiving a second modem manufacturer parameter. However, the Examiner states that "Challenge 615" in Fig. 4 of Scott discloses "receiving a second modem manufacturer parameter." Applicant respectfully disagrees. There is no teaching in Scott that "Challenge 615" is a modem manufacturer parameter, which is a predetermined number. In fact, "Challenge 615" is a randomly generated number, whereas "Modem ID 610" is a predetermined number assigned to

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the originating modem. (Col. 4, lines 41-60.) Accordingly, Challenge 615, which is a random number," is not and cannot be a modem manufacturer parameter. Notwithstanding the foregoing; however, applicant amended claim 30 for further clarification to state that the first and second modem manufacturer parameters are indicative of a manufacturer identity and a particular modem version number of the first and second modems.

With respect to claim 33, the Examiner simply states that Kalmanek discloses H.323, which can be replaced by V.8 to comply with a different standard. Applicant respectfully submits that H.323 is a packet network standard, whereas V.8 is a modem standard. These are completely different. H.323 has nothing to do with Scott's modem training phase, and one would not replace or modify an analog modem training phase with H.323 or vice versa. As stated above, Scott requires continuous identification to battle spoofing and the Examiner offers no suggestion by either Scott or Kalmanek of a desirability to combine the two. In fact, there is not such desire by Scott, since Scott suggests that one-time transmission of identification is undesirable.

Accordingly, it is respectfully submitted that claims 1, 2, 4, 5, 30 and 33 should be allowed.

B.   Rejection of Claims 6-29, 31-32, 38 and 40-48 under 35 USC § 103(a)

The Examiner has rejected claims 6-29, 31-32, 38 and 40-48, under 35 USC § 103(a), as being unpatentable over Scott in view of in view of Kalmanek, and further in view of Dudek, et al. (USPN 5,208,812) ("Dudek"). Applicant respectfully submits that claims 6-29 depend from

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claim 1 and claims 31 and 32 depend from claim 30, and they should be allowed at least for the same reasons stated above in conjunction with patentability of claims 1 and 30.

Further, dependent independent claims 38 and 45, and their respective dependent claims, should also be allowed at least for the same reasons stated above in conjunction with patentability of claims 1 and 30.

Applicant further notes that the Examiner has not shown how Dudek's reference to identifying the telepoint company or system with which the handset is registered has any relevance to the modem DSP version and firmware revision in claims 42-43 and 46-47. Applicant respectfully submits that Dudek states that "the LID code may identify the telepoint company or system with which the handset is registered and through which the use wishes to make the telephone call." (Col. 44, lines 33-36.) In other words, the LID code transmitted by the handset does not identify the handset, but the LID code identifies the receiving system. For example, Dudek further states that "the handset 11 will transmit a LID code indicating that it wishes to make contact with the specific domestic telephone or private exchange system with which it has been registered." (Col. 44, lines 26-29.) In sharp contrast to Dudek, claims 42-43 and 46-47 refer to DSP version and firmware revision of the modem, and not the network within which the modem is registered or the like.

C.   Rejection of Claims 34-37 under 35 USC § 103(a)

The Examiner has rejected claims 34-37, under 35 USC § 103(a), as being unpatentable over Dudek in view of Scott.

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Applicant amended independent claim 34 to recite "transmitting first modem manufacturer parameters to said second modem via said secondary channel, wherein said first modem manufacture parameters are indicative of a manufacturer identity of said first modem and a particular modem version number of said first modem; receiving second modem manufacturer parameters from said second modem via said secondary channel, wherein said second modem manufacture parameters are indicative of a manufacturer identity of said second modem and a particular modem version number of said second modem." Accordingly, claim 34 and its dependent claims 35-37 should also be allowed at least for the same reasons stated above in conjunction with patentability of claims 1 and 30.

D.   Conclusion

For all the foregoing reasons, an early notice of allowance for claims 1-2, 4-38 and 40-48 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;
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